

1 THE HONORABLE MICHELLE L. PETERSON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 MICHELE DESOER,

Case No.: 2:19-cv-01223-MLP

10 Plaintiff,

11 v.
12 **STIPULATED MOTION AND ORDER**
13 **TO STAY**

14 CAPITAL ONE FINANCIAL CORPORATION;
15 AMAZON WEB SERVICES, INC.,

Defendants.

16 **STIPULATION**

17 Pursuant to LCR 7(d)(1) and LCR 10(g), the parties hereby request that the Court stay all
18 proceedings and deadlines in this action pending resolution of the motions for transfer and
19 consolidation under 28 U.S.C. § 1407 that are currently pending before the Judicial Panel on
20 Multidistrict Litigation (“JPML”). The JPML will hear oral argument on the Section 1407 motions
21 on September 26, 2019, and Defendants Amazon Web Services, Inc. (“Amazon”) and Capital One
22 Financial Corporation (“Capital One”) anticipate an order regarding transfer and consolidation of
23 this case and other related cases to be issued shortly thereafter. Counsel for Plaintiff has advised
24 that Plaintiff agrees to the requested stay.

25 This case is one of over 50 putative class actions filed in connection with the cyber incident
26 that Capital One announced on July 29, 2019. Plaintiff filed the Complaint in this case on
27 August 5, 2019; Amazon was served on August 7, 2019; and Amazon’s deadline to answer or
28 respond to the Complaint is currently August 28, 2019.

1 On July 31, 2019, plaintiffs in a related case pending in this District, *Fadullon v. Capital*
2 *One Financial Corporation, et al.*, Case No. 2:19-cv-01189 (W.D. Wash., filed July 30, 2019),
3 filed a motion for consolidation and transfer under 28 U.S.C. § 1407 with the JPML in *In re Capital*
4 *One Consumer Data Breach Litigation*, MDL No. 2915 (J.P.M.L. July 31, 2019) (“*In re Capital*
5 *One*”). *See In re Capital One*, Dkt. No. 1. That motion seeks to have related actions arising out
6 of the Capital One cyber incident, including this case, consolidated with the *Fadullon* case and
7 transferred to this District for pretrial proceedings. Subsequently, plaintiffs in other related cases
8 have filed briefs in the *In re Capital One* matter that support transfer and consolidation, but seek
9 other transferee courts, including the Eastern District of Virginia, the District for the District of
10 Columbia, and the Northern District of California. Numerous notices of related actions have also
11 been filed in *In re Capital One*, and additional related cases continue to be filed and are in the
12 process of being noticed to the JPML as potential tag-along actions.

13 Given that over 50 putative class actions have been filed, all related to the same underlying
14 event and asserting the same or substantially similar factual allegations, the JPML is highly likely
15 to grant the motions for transfer and consolidation. If it does, to conserve the parties’ resources
16 and promote judicial economy, this case will be consolidated with the other putative class actions
17 for centralized pretrial proceedings in a single transferee court. Under these circumstances,
18 “[c]ourts frequently grant stays pending a decision by the MDL Panel regarding whether to transfer
19 a case.” *Good v. Prudential Ins. Co. of Am.*, 5 F.Supp.2d 804, 809 (N.D. Cal. 1998); *see Short v.*
20 *Hyundai Motor Am. Inc.*, No. C19-0318JLR, 2019 WL 3067251 (W.D. Wash. July 12, 2019)
21 (granting stay pending JPML’s resolution of Section 1407 motion); *Gonzalez v. Merck & Co.*, No.
22 CV-07-3034-LRS, 2007 WL 2220286, at *2 (E.D. Wash. Aug. 2, 2007) (granting defendant’s
23 motion to stay pending transfer decision and noting that “well settled case law . . . dictates a stay
24 should be granted to promote judicial economy”); *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358,
25 1362 (C.D. Cal. 1997) (granting stay pending JPML’s ruling because “a majority of courts have
26 concluded that it is often appropriate to stay preliminary pretrial proceedings while a motion to
27 transfer and consolidate is pending with the MDL Panel”); *Bonefant v. R.J. Reynolds Tobacco Co.*,
28 No. 07-60301-CIV, 2007 WL 2409980, at * 1 (S.D. Fla. July 31, 2007) (“[I]t is common practice

1 for courts to stay an action pending a transfer decision by the JPML.”). In fact, Capital One has
2 already successfully moved to stay over 20 cases related to the cyber incident. *See, e.g., Heath, et*
3 *al. v. Capital One Financial Corp., et al.*, 3:19-cv-555-JAG, Dkt. No. 14 (E.D. Va. Aug. 16, 2019)
4 (order staying nine related cases pending decision from the JPML); *Hilker v. Capital One*
5 *Financial Corp., et al.*, No. 1:19-cv-995-RDA-JFA Dkt. No. 15 (E.D. Va. Aug. 16, 2019) (order
6 staying related case pending decision from the JPML); *Francis v. Capital One Financial Corp.*,
7 No. 8:19-cv-1898 (M.D. Fla. Aug. 21, 2019), ECF No. 11 (same); *Berger v. Capital One Financial*
8 *Corp.*, No. 1:19-cv-2298 (D.D.C. Aug. 22, 2019) (same). Motions to stay are currently pending
9 in other cases, and Capital One—along with AWS in the cases where it is named as a defendant—
10 will continue to seek stays in additional related cases.

11 Here, too, a short stay of proceedings until the JPML resolves the pending Section 1407
12 motions will promote judicial economy and sound judicial administration, avoid duplicative
13 pretrial proceedings and potentially inconsistent pretrial rulings, and prevent prejudice to all
14 parties. The stipulated stay is not intended to prevent this District Court from relating or
15 coordinating this action with other related matters filed in this District of its own volition during
16 the pendency of the JPML proceedings.

IT IS SO STIPULATED.

18 | DATED this 28th day of August, 2019 Respectfully submitted,

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ORDER GRANTING STIPULATED MOTION TO STAY

IT IS SO ORDERED.

Dated this 29th day of August, 2019.

W. J. Reesom

MICHELLE L. PETERSON
United States Magistrate Judge